

REMARKS

Claims 34-64 were presented for examination and claims 34-63 were rejected while claim 64 was identified as allowable pending correction of informalities. In the current amendment, claims 34, 49 and 64 have been amended. No new matter has been introduced. Upon entry of the current amendment, claims 34-64 will be pending in this application, of which claims 34, 49 and 64 are independent. Applicants submit that pending claims 34-64 are patentable and in condition for allowance.

The following comments address all stated grounds of rejection. Applicants respectfully traverse all rejections and urge the Examiner to pass the claims to allowance in view of the remarks set forth below.

I. EXAMINER INTERVIEW

Applicants thank the Examiner for taking the time to interview via telephone with Applicants' representatives on October 23, 2009. During the interview, the Examiner and Applicants' representatives discussed claim amendments in view of the allowable subject matter identified by the Examiner.

II. CLAIM OBJECTIONS

The Examiner objects to claim 64 because of a typographical error. Applicants hereby amend claim 64, thereby addressing this objection. Applicants submit amended claim 64 is patentable and in condition for allowance. Accordingly, Applicants request the Examiner to withdraw the objection to claim 64.

III. CLAIM REJECTIONS UNDER 35 U.S.C. §101

Claims 49-63 are rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. Applicants hereby amend independent claim 49. Claims 50-64 depend on and incorporate all the patentable subject matter of the amended independent claim 49. Applicants respectfully traverse this rejection and submit that claims 49-63, as amended, are directed to statutory subject matter. Accordingly, Applicants request the Examiner to withdraw the rejection of claims 49-63 under 35 U.S.C. §101.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 34-39, 45-54 and 60-63 are rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 6,360,270 to Cherkasova et al. (“Cherkasova”) in view of U.S. Patent No. 7,024,477 to Allan (“Allan”), and further in view of U.S. Patent No. 7,000,012 to Moore et al. (“Moore”). Claims 34 and 49 are independent. Claims 35-48 depend on and incorporate all the patentable subject matter of independent claim 34. Claims 50-63 depend on and incorporate all the patentable subject matter of independent claim 49. Applicants respectfully traverse this rejection and submit that Cherkasova, Allan and Moore, alone or in combination, fail to teach or suggest each and every element recited in claims 34-63.

A. Independent Claims 34 and 49 Patentable over Cherkasova, Allan and Moore

To establish obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Independent claims 34 and 49, as amended, are directed towards a method and system for managing throughput of a server while avoiding overload of the server. Applicants submit that the combination of Cherkasova, Allan and Moore fails to teach or suggest each and every element of the amended independent claims 34 and 49.

In the Office Action, the Examiner allowed claim 64 over the combination of Cherkasova, Allan and Moore. Independent claims 34 and 49 are hereby amended to include a portion of the allowable subject matter of claim 64. Accordingly, Applicants submit the combination of Cherkasova, Allan and Moore fails to teach or suggest each and every element of claims 34 and 49, as amended.

Because Cherkasova, Allan and Moore, alone or in combination, fail to disclose, teach or suggest each and every element of the claimed invention, Applicants submit that amended independent claims 34 and 49 are patentable and in condition for allowance. Claims 35-39 and 45-48 depend on and incorporate all the patentable subject matter of independent claim 34. Claims 50-54 and 60-63 depend on and incorporate all the patentable subject matter of independent claim 49. Therefore, Applicants submit that claims 35-39, 45-48, 50-54 and 60-63 are also patentable and in condition for allowance.

Thus, Applicants request the Examiner to withdraw the rejection of claims 34-63 under 35 U.S.C. §103.

B. Claims 40-44 and 55-59 Patentable over Cherkasova, Allan, Moore, Phaal and Shabtay

Claims 40-41, 55-56 are rejected by the Examiner as unpatentable over Cherkasova in view of Allan in further view of U.S. Patent No. 6,055,564 to Phaal (“Phaal”). Claims 42-44 and 57-59 are rejected under 35 U.S.C. §103 as unpatentable over Cherkasova in view of Allan in further view of U.S. Published Application No. US 2002/0120743 to Shabtay et al. (“Shabtay”). As with Cherkasova, Allan and Moore above, Phaal and Shabtay also fail to detract from the patentability of the claims 34 and 49. Because Phaal and Shabtay, alone or in combination with Cherkasova, Allan and Moore fail to teach or suggest each and every element of the claimed invention, Applicants submit claims 40-44 and 55-59 are patentable and in condition for allowance. Thus, Applicants request the Examiner to withdraw the rejection of claims 40-44 and 55-59 under 35 U.S.C. §103.

CONCLUSION

In light of the aforementioned amendments and arguments, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection, and allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants’ attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants’ attorney at the telephone number identified below.

Respectfully submitted,
CHOATE, HALL & STEWART, LLP

Dated: December 4, 2009

/Christopher J McKenna/
Christopher J. McKenna
Registration No. 53,302
Attorney for Applicants

Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110
(617) 248-5000